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January 30, 1995

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Via Federal Express

Office of the Secretary
Federal Communications Commission
Washington, D. C. 20554

Dear Sir or Madam:

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, enclosed herein is an original and nine (9) copies of the Comments of ComTech Associates, Inc.

If you need any additional information, please feel free to call me at the telephone number referenced above.

Sincerely,



Richard S. Wilensky

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Before the

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FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of

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**Amendment of parts 2 and 15 of the
Commission's Rule to Permit Use of
Radio Frequencies Above 40 GHz for
New Radio Applications**

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ET Docket No. 94-124

RM - 8308

COMMENTS OF COMTECH ASSOCIATES, INC.

**Richard S. Wilensky
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2323 Bryan Street, Suite 1600
Dallas, Texas
214/220-6334**

January 30, 1995

Its Attorney

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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ET Docket No. 94-124
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COMMENTS OF COMTECH ASSOCIATES, INC.

ComTech Associates, Inc. ("ComTech") by its attorneys, hereby files comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. ComTech was organized to develop, manage and operate systems utilizing CellularVision Technology for the Local Multipoint Distribution Service ("LMDS") in the 27.5 - 29.5 GHz ("28 GHz") band. ComTech has entered into license agreements for the use of LMDS technology, both domestically and internationally and is preparing to implement the service.

1. Delay in Rulemaking Will Damage Small Business. It is not clear whether the Commission's NPRM in the instant proceeding is an attempt to replace or delay the LMDS Rulemaking, CC Docket No. 92-297. This is because it is not clear whether the "Licensed Millimeter Wave Service" was intended to replace or supplement LMDS in the 28 GHz band. It is clear, however, that if one rulemaking has led to such incessant delays in rolling-out LMDS, two rulemakings will completely frustrate the process. Small businesses that have based their financing and business planning on the 1994 (now 1995) auction for the 28 GHz band cannot survive while the Commission determines these issues.

2. Market Forces Should Determine the Allocation of Spectrum. Consistent with the intent of Congress in enacting a market-based allocation system for new communications technologies, ComTech believes that market forces should sort out the competing claims among possible users of the 28 GHz and 40 GHz bands. The Commission should conduct immediate market auctions of both frequency bands and allow competing providers to bid for either or both frequencies. Mandatory build-out requirements, as currently contemplated in the LMDS Rulemaking would prevent frequency

hoarding. However, allowing the transferability of licenses would ensure that the frequencies are used efficiently. The technology offering the most efficient service at a particular frequency should ultimately prevail.

3. Conclusion. A delay in market auctions will not hurt larger companies or companies with uncertain technologies; however, a delay in proceeding with market auctions may be devastating to entrepreneurial companies that have invested substantial capital and energy in anticipation of the auctions.

Respectfully submitted,

COMTECH ASSOCIATES, INC.

By: 

Richard S. Wilensky

Middleberg, Riddle & Gianna

214/220-6334

January 30, 1995

Its Attorney